IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.178 OF 2007

Francis Fernandes ... Petitioner

V/s.

The State of Maharashtra. ... Respondent

Ms. Archana Khan for the petitioner.
Mrs. A.S. Pai, APP for the State.
Mr. A.K. Lalla i/b. Lalla & Lalla for original complainant.

CORAM : SMT. RANJANA DESAI &
ANOOP V. MOHTA,JJ.

DATED : 5th March, 2007.

P.C.

. We have heard the learned counsel for the petitioner.

2. In this petition, the petitioner has prayed that F.I.R. in C.R.42 of 2007 registered at the Chembur Police Station at the instance of respondent 2 be quashed.

3. We have perused the F.I.R. It is well settled that F.I.R. can be quashed only if prima-facie, it does not disclose any offence at all. Having perused the F.I.R., we are unable to come to the conclusion

that the F.I.R. does not disclose any offence at all. The F.I.R. prima-facie clearly indicates that the accused has abused the complainant by referring to his caste. The caste certificate of the complainant, which according to the police, has been verified indicates that he belongs to scheduled caste. The petitioner is a Christian. The offence is said to have been committed at 9.45 a.m. at Mahadev Patil Wadi at a public place. Prima-facie therefore, the offence under Section 3, (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out. The learned counsel for the petitioner contended that this is a false and concocted case and the complainant has been put up by the builder because the petitioner had objected to the S.R.A. scheme. She submitted that in fact on that day at the relevant time the petitioner had gone for his work at Flora Fountain.

4. The learned APP on instructions from the officers states that the police had visited the petitioner's employer to find out whether his case that he was at his place of work is true or not. The employer expressed his inability to state as to exactly at what time the petitioner had attended the office. The learned A.P.P. has produced an extract from the daily

attendance register maintained by the employer. She points out that there is some overwriting in the column meant for 29th December 2006. The police wants now to further investigate into this.

5. At this stage, we do not want to express any opinion as to whether there is an overwriting or not. We are however of the opinion that the F.I.R. cannot be quashed.

6. In the circumstances, the petition is rejected. However, we make it clear that nothing said by us in this order should be construed to mean that we have expressed any opinion on the merits of the matter.

7. The petitioner also made a grievance that the investigation is required to be carried out by the officer not below the rank of Dy.C.P. and this requirement is flouted by the police. The learned A.P.P. states that the investigation is being carried out by A.C.P. Jaydev as of today. This aspect can be examined by the trial court at the appropriate stage.

8. The petition is rejected.

[SMT. RANJANA DESAI,J.]

[ANOOP V. MOHTA, J.]